

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

NAVARRE SOWELL,

Petitioner,

v.

CIVIL ACTION NO. 1:16CV153
(Judge Keeley)

DAVID WILSON, Warden,

Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [DKT. NO. 23], GRANTING RESPONDENT'S
MOTION TO DISMISS [DKT. NO. 16], AND DENYING PETITION
FOR HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 [DKT. NO. 1]

Pending before the Court is the Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition") filed by the petitioner, Navarre Sowell ("Sowell"), on July 11, 2016 (Dkt. No. 1). In it, he alleges that the Federal Bureau of Prisons ("BOP") has miscalculated his sentence by failing to give him credit for certain time served prior to his sentencing. *Id.* at 5. Pursuant to the local rules, the Petition was referred to the Honorable James E. Seibert, United States Magistrate Judge, for initial review. On August 29, 2016, Magistrate Judge Seibert directed the respondent to show cause why the writ should not be granted (Dkt. No. 6). After receiving two extensions of time, the respondent filed a motion to dismiss or, alternatively, for summary judgment on October 27, 2016 (Dkt. No. 16). In support of his motion, the respondent argues that Sowell has failed to properly exhaust his administrative remedies (Dkt. No. 17 at 5-6).

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On October 31, 2016, Magistrate Judge Seibert issued a Roseboro notice advising Sowell of his right to file a response in opposition within 21 days (Dkt. No. 19). Thereafter, on November 18, 2016, Sowell moved the Court to stay or continue his case, acknowledging that he had not properly exhausted his administrative remedies (Dkt. No. 21). Magistrate Judge Seibert denied that motion as moot because 1) Sowell must exhaust his administrative remedies prior to filing a § 2241 petition and 2) § 2241 does not contain a statute of limitations barring a future filing (Dkt. No. 22 at 1-2).

In a Report and Recommendation ("R&R") dated November 23, 2016, Magistrate Judge Seibert recommended that Sowell's Petition be denied and dismissed without prejudice (Dkt. No. 23 at 8). The R&R concluded that Sowell had failed to properly exhaust his administrative remedies with the BOP prior to filing the Petition. Id. at 7. The R&R also informed Sowell of his right to file any objections to the recommendations within fourteen (14) days following his receipt of the R&R. Id. at 8; see also 28 U.S.C. § 636(b)(1)(C). Although he received the R&R on November 28, 2016 (Dkt. No. 25), Sowell has not filed any objections.

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This Court is required to review de novo only those portions of the magistrate judge's findings to which specific objection is made. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). "[T]he Court may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object." Id. at 604 (citing Camby, 718 F.2d at 199). Because Sowell has not filed any objections, and has expressed agreement with the conclusion that he did not properly exhaust his administrative remedies with the BOP, the Court's review of the R&R is for clear error.

Upon review of the R&R and the record, the Court adopts the opinion of the Magistrate Judge for the reasons discussed in the R&R (Dkt. No. 23). Therefore, the Court:

1. **ADOPTS** the R&R (Dkt. No. 23);
2. **GRANTS** Respondent's Motion to Dismiss (Dkt. No. 16); and
3. **DENIES** the Petition (Dkt. No. 1) and **DISMISSES** this civil action **without prejudice** and **ORDERS** that it be **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

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The Court **DIRECTS** the Clerk to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se plaintiff by certified mail, return receipt requested.

DATED: December 23, 2016.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE